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WATER RESOURCES OVERSIGHT COMMITTEE

REPORT TO THE LEGISLATURE

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The Water Resources Oversight Committee was created by Chapter 609, Laws of Montana 1981, to oversee state agency efforts charged with developing and managing Montana's water resources, including the water development program established by Chapter 505, Laws of Montana 1981. The Committee was also assigned to continue the work of the Water Resources and Adjudication Oversight Committee created by Chapter 708, Laws of Montana 1979, in overseeing the implementation of the water rights and adjudication system provided for in Title 85, Chapter 2, MCA.

The major legislation governing state water programs of concern to the Committee is outlined below.

1. The Montana Water Resources Act of 1967

The Montana Water Resources Act of 1967 (Chapter 158, Laws of Montana 1967) was the first of a series of significant modern water acts passed by the Legislature.

The primary provisions of the Act remain in force today and provide the framework for the state's planning and development activities. The Act's major features include:

1. a requirement that a continuing comprehensive inventory of water resources in the state be prepared and published; and

2. a requirement that a comprehensive, coordinated multiple-use water resources plan, known as the "state water plan" be formulated and that all or part of it be submitted to each general session of the Legislature.

The 1967 Legislature appropriated $64,700 for fiscal year 1968 and $73,800 for fiscal year 1969 for the purposes of the Act. Appropriations have been made regularly since 1967 for the statewide water plan and water resource inventory.

A publication of the Water Resources Division of the Department of Natural Resources and Conservation entitled, The Framework Report, Volume One, provides the best overall explanation of the status of implementation of the Water Resources Act and current plans for future implementation of the Act.

If there is any major problem with implementation it may be that a requirement to submit a "state water plan or any section thereof or amendments, additions, or revisions thereto" to each session of the Legislature may never have been implemented in a readily identifiable form. In view of the "Statement on the Final Plan" presented in The Framework Report, it may be an unreasonable requirement that the Legislature may wish to change.

2. Article IX, Section 3, Constitution of Montana, Water Rights

New provisions related to water rights were adopted with the new Montana Constitution in 1972.

The Constitution included four major provisions:

1. a confirmation of existing rights;

2. a statement that appropriated water use is a public use;

3. that all water within the state is the property of the state subject to appropriation for beneficial uses; and

4. a requirement that the legislature provide for the administration, control, and regulation of water rights and that it establish a system of centralized records for water rights.

To the extent that these provisions need to be implemented, they are so primarily through the Montana Water Use Act, which was passed in 1973.

3. The Montana Water Use Act

The Montana Water Use Act (Chapter 452, Laws of Montana 1973) established the basis for the administration of water rights used in Montana today.

The Act implemented the water rights provisions of the 1972 Constitution in that it provided a procedure for the determination and confirmation of existing water rights, provided a new means governing the appropriation and use of surface and ground water, and established a centralized system of records of all water rights.

The Montana Water Use Act is being actively implemented. Its provisions outline the only way for obtaining a water right or for changing the use of a water right. The adjudication of existing water rights, which was established by the Water Use Act and revised by Senate Bill 76 (1979), is proceeding apace. Upon completion of the adjudication of existing rights all water rights information will be maintained in a centralized record system managed by the Department of Natural Resources and Conservation.

4. Adjudication of Water Rights

The water rights adjudication process was altered in 1979 by Senate Bill 76 (Chapter 697, Laws of Montana 1979). Senate Bill 76 amended the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights.

The Act is being actively implemented as every water user knows. The Supreme Court granted a petition to extend the deadline of January 1, 1982, for the filing of all existing rights to July 1, 1983, the statutory deadline in the Act.

The Reserved Water Rights Compact Commission created by the Act is continuing its work to negotiate compacts quantifying reserved water rights held by the federal government and Indian tribes in the state.

5. The Water Development Program

The Water Development Program was enacted by Chapter 505, Laws of Montana 1981. It is an extremely significant piece of legislation designed to enable the people of Montana to enjoy the full economic and recreational benefits of the state's water resources. The program is a long-term one providing financial and administrative assistance to private, local, and state entities for water resource development projects and activities.

The first effort at implementing a part of the program was established by the enactment of House Bill 846 (1981), which appropriated funds to the Department of Natural Resources and Conservation for the rehabilitation of the Tongue River Dam and approved the issuance of State of Montana Coal Severance Tax Bonds for a state-federal cost share of the Tongue River Dam rehabilitation construction costs.

Further implementation will be an important responsibility of the Legislature and the Department.

In carrying out its oversight responsibilities, the Committee met five times over the interim. The whole range of water programs was discussed. The Committee visited the water research facilities at the Montana Bureau of Mines and Geology in Butte and the offices of the Water Court in Bozeman. Minutes are available at the Legislative Council offices.

In addition, the Committee jointly sponsored with the Environmental Quality Council, a Ground Water Conference. The conference, held April 1982, was well attended by persons interested in ground water issues. Proceedings are available at the Environmental Quality Council office.

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